

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE HENRY BYNDUM,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 245447

Berrien Circuit Court

LC No. 02-401386-FC

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, entered after a jury trial. We affirm.

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another, i.e., an assault; and (2) an intent to do great bodily harm less than murder. Assault with intent to do great bodily harm less than murder is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. Error does not result from the omission of an instruction if the charge as a whole covered the substance of the omitted instruction. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Defendant argues that the trial court denied him a fair trial by failing to instruct the jury on accident as a defense to a specific intent crime, CJI2d 7.3a. We disagree and affirm defendant's conviction. Defendant's failure to request this instruction or to object to the trial court's failure to read this instruction precludes appellate relief. MCL 768.29. The evidence did not support the giving of an instruction on accident as a defense to a specific intent crime. The testimony given by complainant and a neighbor supported a finding that defendant struck complainant in the head with a bat both before and after complainant fell down the stairs.

Furthermore, in order to convict defendant of assault with intent to do great bodily harm less than murder, the jury was required to find that he specifically intended to assault complainant and to do complainant great bodily harm. *Parcha, supra*. Because defendant cannot show error, he cannot demonstrate plain error that affected his substantial rights. *People v Gonzalez*, 468 Mich 636, 643-644; 664 NW2d 159 (2003); *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994).

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray